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FORMAL CIVIL RIGHTS COMPLAINT vs CITY OF ELGIN, TX

[REDACTED]

June 2, 2005

TO: Shirley Augerson EPA Administrator Dallas, TX Regional Office

RE: City of Elgin Pattern and Refusal/Failure To Deliver Sewer & Water Facilities IAW State Guidelines and 12-3-03 TCEQ Settlement Agreement & Present Retaliation

Dear Ms. Augerson and To Whom It May Concern:

I respectfully ask that you find the following for your review and consideration.

In an effort to bring some clarity to the following dilemma we face; the following (see faxed history 1-20-1947 – 8-29-01) chronological history summary is attached. (marked exhibit 1) This summary will provide basic history displaying ongoing pattern and practices of discrimination by the City of Elgin.

We are presently receiving discriminatory treatment and harassment as a result of previously challenging the City's formal refusal (They attempted to Cancel its CCN Certificate) to deliver sewer and water services to the J.C. Madison Subdivision which resulted in a 12-03-04 Settlement Agreement which required the City to deliver services to the J.C. Madison Subdivision within State of Texas Guidelines.

We presently have 4 Sewer and Water Service applications pending as follows:

[REDACTED] (initially filed on 11-14-02) Which Would provide Sewer & Water for [REDACTED]  
[REDACTED] as the [REDACTED] Straddles 4 contiguous lots that we own within the  
subdivision (Copy of application attached)

[REDACTED] (initially filed 9-22-04) see attached.

[REDACTED] (initially filed 10-4-04) see attached

[REDACTED] (initially filed 10-4-04)  
to inhabitants of subdivision following; see attached.

The Texas State Guideline 291.85 specifically states that "EXCEPT FOR GOOD CAUSE SHOWN, THE FAILURE TO PROVIDE SERVICE WITHIN 180 DAYS OF THE DATE A



COMPLETED APPLICATION WAS ACCEPTED FROM A QUALIFIED APPLICANT MAY CONSTITUTE REFUSAL TO SERVE, AND MAY RESULT IN THE ASSESSMENT OF ADMINISTRATIVE PENALTIES OR REVOCATION OF THE CCNCERTIFICATE ETC."

Since the date of our initial application dated 11-14-02; service has not been completed or followed up on (being [REDACTED] or [REDACTED]) to consummate this request. (2 years 6 months over 18 days) since the completion of our settlement agreement dated 12-3-03).

Since the initiation of the three applications dated 9-22-04 and 10-4-04 respectively; over 222 days have expired; yet no appropriate notices or updates LAW 291.85 have been provided us; except for the THREATENING LETTER WE RECEIVED (5-26-05) FROM THE CITY OF ELGIN THREATENING TO SHUT OFF SERVICES TO PROPERTY@ [REDACTED] WHILE SENDING CITY OFFICIALS (CITY CLERK) TO THE HOUSE @ [REDACTED] TO COLLECT INFORMATION FROM MY TENANT WHILE DIRECTLY THREATENING THEM THAT THEY WERE GOING TO SHUT OFF THERE WATER (prior to the faxed 5-26-04 ltr enclosed)

Following the receipt of the faxed letter from City Manager Jim Dunaway's representative; no notice or updates were ever forwarded to us.

In response to this letter we contacted the TCEQ Enforcement Division and reported these violations of the 12-03-03 Settlement Agreement also indicating ongoing harassment, intimidation of our tenants and continued violation of the 291.85 Guidelines to a Curtis Fisher.

Today 6-2-05; I received a curt telephone call from Mr. Fisher saying that even though the city may have violated the guidelines that there is nothing he can do (the enforcement officer talking) and that I should get with the City to settle this matter as they addressed on the 12-26-05 faxed letter. When I asked him to forward a memorandum of his findings he was reluctant and practically refused this specific request.

Based upon the history and pattern practice of the City of Elgin's refusal to deliver sewer and water service, and the role of direct activism that I have taken to ensure that (petition with over 100 signatures of local inhabitants saying they've been discriminated against in the deliver of sewer and water services) the City is now taking an active role to retaliate against me and my family by failing to follow up on sewer services request; while attempting to defame my reputation by intimidating my tenants, and attempting to call into question the validity of my service request at the properties Indicated.

In closing; I am enclosing copies of the Settlement Agreement, chronology of discriminatory treatment, copies of newspaper articles that reported Elgin's discriminatory conduct, and various support documents. Each and every allegation can be proven as we possess all source documents and correspondence from the City of Elgin which detail their intent to discriminate, and deceptive treatment of sewer and water service applicant. In addition; key witness to the City's conduct is a [REDACTED] located at [REDACTED]. He is willing to testify in detail as to the City's discriminatory conduct and intent.

We are asking for Federal intervention in this matter; as the City is a recipient of Federal funds, and that by engaging in such conduct; minority citizens are being denied basic Civil Rights. We also ask for intervention to stop the City's present efforts at harassment, intimidation and retaliation based upon my previous efforts to ensure fair treatment for the inhabitants of the J.C. Madison Subdivision.

In closing; I ask that we be compensated and that the City be additionally financially penalized for the pain, suffering and mental anguish that it has caused to my family as we have never deserved the treatment we are currently receiving. I have attempted to reasonably resolve this matter through the TCEQ and other various efforts; yet the 12-3-03 decisions is apparently being undermined by the City and the TCEQ based upon the present status of my service request. (incomplete over 222 days and 2 years 6 mos respectively) Any support documents that you require can be promptly Forwarded by fax or FedEx.

Sincerely,

[Redacted Signature]

\_\_\_\_ Enclosures

Numbered \_\_ thru \_\_



TCEQ REGULATIONS REQUIRING NOTIFICATION (180 DAY PERIOD) FOLLOWING SUBMISSION OF A SERVICE REQUEST. THESE GUIDELINES WERE NOT FOLLOWED REGARDING THE FOUR ATTACHED COPIES OF ORIGINAL SERVICE REQUEST.

**§291.85. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.**

(a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law.

relies to  
we:

(1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed.

(2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.

(4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within 5 working days after a completed service application has been accepted.

(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.

(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.

(c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins. Also see §291.81(a)(1) of this title (relating to Customer Relations).

(d) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the retail public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the retail public utility which will provide a reasonable right of access and use to allow the retail public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant. As a condition of service to a new subdivision, retail public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water and/or sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.



Chronological History of Refusal to Serve J.C. Madison Subdivision Intentional Redlining of Utilities Distribution (1-20-1947 thru 8/29/01 Support Docs Available)

On January 20, 1947 the J.C. Madison Addition (subdivision) of the City of Elgin was established on the eastern boundary of Elgin. (please see attached subdivision map)

On July 1, 1997, [REDACTED] purchased lot [REDACTED], J.C. Madison Addition, Town of Elgin, Cabinet 1, Slide 5-A, Plat Records; at a "real estate Auction" at the Bastrop County court house steps.

On August 2, 2000 following a 3 year wait to develop lot [REDACTED] into a personal homestead for personal housing, I began the process of requesting that the "Elgin Water Works City of Elgin, Texas install city water service to lot [REDACTED]. The request for city water service was granted on August 2, 2000.

On April 9, 2001, I requested in writing (via certified mail) to "receive vital and necessary installation of regular city service in order to accommodate the previous completion of regular city water service completed on Aug 2, 2000." A suspense date of April 20, 2001 was established for "Jim Dunaway, City Manager" to respond.

On May 4, 2001, I received a response to this certified mail request that my property "is not located within the city limits of Elgin, and that any sewer service would have to be accomplished by extension and that costs totaling \$13,000 would have to be borne by me." Also, an additional requirement was mandated that "I would have to initiate a voluntary annexation petition" in order to have this request granted; even though water service was previously granted on August 2, 2001.

On May 18, 2001, I requested in writing (via certified mail) a comprehensive cost breakdown of the \$13,000 estimate for the extension of Elgin City Water Service such as capital recovery fees, materials costs etc. At this time I became suspicious that the estimates provided and the reasons for not providing sewer service were inequitable and unjustified as my property line was only 10 feet away from the city limits of Elgin, TX. In addition, I had observed that such fees were not being assessed the inhabitants of a western section of town that was recently annexed by the City of Elgin on 2-2-2000 as they were only required to pay \$1,285.00. (for sewer service) A suspense date of June 1, 2001 was established for "Jim Dunaway, City Manager" to respond.

On May 23, 2001, I received a response from Jim Dunaway, City Manager with a cost breakdown for sewer service to my property. This estimate was about \$190.00 less (\$12,810.00) than the previous estimate; yet this estimate was also unreasonable and unjustifiable.

On June 24, 2001 I decided to contact the Texas Natural Resources division at [policy@tnrcc.state.tx.us](mailto:policy@tnrcc.state.tx.us) in order to determine whether "city of Elgin's refusal to provide prompt sewer service (without barriers) and of its special requirements to initiate voluntary annexation procedures prior to being allowed to receive city sewer service was



reasonable and justifiable considering the close proximity of my property to the "City boundary line." (10 feet away)

On June 26, 2001, I received a letter from the TNRCC that indicated that the city limits do not always establish city service area lines. A [REDACTED] indicated that each city has a CCN (certificate of Convenience and Necessity" and that Elgin has one (CCN) and that the boundaries of the CCN must be used to establish the service areas.

On August 2, 2001, following a waiting period for TNRCC to fully determine city of Elgin's responsibility to provide sewer service, I received a letter from TNRCC indicating that "City of Elgin's sewer CCN goes well outside the city limits. And though you (Mr Dunaway) thought your boundaries were the city limits, that does not negate the fact that the city must serve those people outside the city limits but within the CCN of Elgin."

On August 15, 2000, via certified mail, I requested sewer service within the CCN area in accordance with Chapter 30 Texas Administrative Code, 291.85. I also requested that any fees be either waived, or that I be required to pay no more than what the inhabitants of the recently annexed portion of Western Elgin, Texas were required to pay in February 2000. A suspense date of August 22, 2001 was established for "Jim Dunaway, City Manager to respond.

On August 22, 2001, I received a letter from Mr Dunaway indicating that "In response to your letter of August 15, 2001, please be advised that the City of Elgin will begin the process of providing sewer service to your lot as soon as you pay the required fees to the City of Elgin." This letter now indicated that I would be allowed to pay a fee of \$1,285.00 instead of the \$12,810.00 fee quoted on May 23, 2001. Approximately \$11,525.00 less than previously quoted! As of today's date, no form of apology has been offered regarding the inaccurate estimates or refusal to serve an area that was within their required CCN service area.

I am requesting your legal assistance in regards to this issue as the refusal to provide sewer service to the inhabitants of this subdivision has continued since its inception on January 20, 1947. (over 54 years and 7 months) At present the many inhabitants of this subdivision are without basic sewer service and are forced to use rudimentary forms of sewage disposal such as outdoor portable potties, or the installation of bootlegged septic systems. The lots within this subdivision "by state law are too small for legal septic systems." The average lot size is 50x120 (4800 sq ft) and you must have on average in the state of TX a Lot size of 1 acre (43, 460 sq ft to install a legitimate system. (per Travis County inspector)

I believe, we are victims of "Intentional Sewer Water Service Redlining" with a pattern of refusal to serve dating back to the subdivisions inception on January 20, 1947; a period of over 54 years and 7 months. I have in my possession the necessary documents to support these allegations and respectfully request your assistance by investigating this matter at your earliest convenience.



FAXED TO 1-512-239-2550

[REDACTED]

May 27, 2005

TO: PAM CAMPBELL  
TCEQ Enforcement Division

Re: Chronological Summary; City of Elgin Cancellation CCN Issue and Present Attempt To (REFUSAL TO SERVE)  
CRIMINALIZE Utility Applications Dated 11-14-02, [REDACTED] 9-22-04 ([REDACTED])  
[REDACTED] 10-4-04 [REDACTED] [REDACTED]; [REDACTED]  
[REDACTED] and [REDACTED] (which is sited on [REDACTED]; yet accessed from [REDACTED])

Dear Mrs. Campbell and To Whom It May Concern:

I respectfully request your assistance. In an effort to bring some clarity to the present dilemma; I and my Wife [REDACTED] currently face; the following chronological summary is provided for your consideration as follows: (A relevant source document is attached for each issue referenced)

On November 14, 2002; formal request was made to provide sewer and water service to 409 Houston Street Elgin, Texas LAW state of Texas guidelines, and with procedures/precedents established to deliver sewer and water service to another rental property we own in the J.C. Madison Subdivision; referred to as [REDACTED] (The TCEQ ordered Elgin to deliver full utilities on August 2, 2001) Please see attached chronological history dated 8-30-01 covering period from 7-1-97 - 8-30-01.

From November 14, 2002 until December 3, 2003 (1 year 20 days) a protracted legal dispute with overtones of racism arose from the City of Elgin's refusal to provide sewer and water service to the J.C. Madison Subdivision.

On December 3, 2003; Settlement Agreement and Release was reached addressing fee structure/costs for delivery of sewer and water service to the J.C. Madison Subdivision and individual lots in exchange for dropping our valid legal claims. (Inhabitants Houston St, Adams St, Monroe St etc) Please see previously faxed copy of Settlement Agreement.

In addition; the property @ [REDACTED] (is partially situated on J.C. Madison Lots [REDACTED] [REDACTED] which we completely own; see attached map) is at the rear of the [REDACTED] tract; therefore water service @ [REDACTED] is appropriately used to deliver water service to it.

On September 22, 2004; sewer and water service was requested @ [REDACTED] (now [REDACTED] per 911 Addressing) in accordance with the settlement agreement and TCEQ Hearings. An application was completed and \$100.00 initial fee was paid as indicated by the attached copy of receipt. It was not until 5-26-05 that we received any formal response or letter of instruction (or additional invoice) from the City on the status of this application; well beyond a 180-day period.



On October 4, 2004; sewer and water service was requested @ [REDACTED] (now [REDACTED] per 911 Addressing) in accordance with the settlement agreement and TCEQ Hearings. An application was completed and \$100.00 initial fee was paid as indicated by the attached copy of receipt. It was not until 5-26-05 that we received (threatening letter) any formal response from the City on the status of this application; well beyond a 180- day period.

Also on October 4, 2004; sewer and water service was requested @ [REDACTED] (now [REDACTED] per 911 Address change) in accordance with the settlement agreement and TCEQ Hearings. An application was completed and \$100.00 initial fee was paid as indicated by the attached copy of receipt. It was not until 5-26-05 that we received any formal response from the City on the status of this application; well beyond a 180- day period.

On May 26, 2005; after over 215 days have passed since our initial September request for sewer and water service; we received an ominous letter from the City of Elgin. This letter was contrary to the standard letter of instruction; work order, and invoice that is the usual procedure to consummate sewer and water service request within Elgin's CCN area. For reference; previous civilized notifications involved receiving a standard letter of instruction from Jim Dunaway during a previous 8-1-01 contested service request involving the TCEQ's (Enforcement Division) Lead Investigator; [REDACTED] who assisted in demanding that utilities be delivered to our rental property @ [REDACTED]. In subsequent sewer request we expected the same standard of notification and civilized treatment; yet the notification letter of 5-26-05 has indicated other intentions. (same subdivision)

As of today, May 27, 2005; apparent retaliation has resulted based upon our previous legal challenges to their discriminatory conduct and CCN violations. It is my firm perception based upon a telephone call that I received from [REDACTED] who specifically told me that he was warned not to contact [REDACTED] and that they were placing this matter within the jurisdiction of their legal department. [REDACTED] who installed sewer taps at all of the properties indicated, and who is a designated installer of sewer and water service throughout Elgin's CCN area.

Translation??? It appears that the city is trying to take some form of retaliatory civil; or other adverse action against us; even though they have purposely failed to follow through on an original work order request that is over 215 days old. (2 years 6 months 13 days counting original 11-14-02 original work request)

What are we asking you to do? We are requesting legal assistance to address the attached letter dated 5-26-05; as we believe the claims are baseless, and retaliatory in nature. We believe that the City has breached the Settlement Agreement by failing to respond to the initial sewer and water request (via systematic work request procedures) in a timely fashion and has now decided to create a legal smoke screen to cover its own inaction to our existing request for sewer and water service per the attached copies of service requests.

To the best of my knowledge; Mr. James legitimately installed all sewer and water connections on lots [REDACTED] (4 taps) with the direct knowledge of Gary Cooke; City Public Works Dir; therefore I was never in doubt as to the legitimacy of Mr. James work efforts.



Also, [REDACTED] was previously/historically served by City water etc; (old juke joint bar on site) therefore existing precedent exempts this lot from \$1,900.00 fees indicated in the 12-3-03 settlement agreement.

In addition, [REDACTED] was also previously/historically served by City water etc; (old house with previous history City water service) therefore existing precedent exempts this lot from \$1,900.00 fees indicated in the 12-3-003 settlement agreement.

Based upon the existing agreement; the only additional fees we should be invoiced for are the properties located @ [REDACTED] This amounts to approximately \$3,800.00 and can be payable within a 90 day period IAW the settlement agreement. (See Map)

"We also maintain that our belief that we are being retaliated against is justifiable based upon the manner in which the City has chosen to contact us after over 215 days have passed since the original work order request. The City's conduct is also questionable considering the manner in which the City has secretly conducted itself by not handling this matter in a straight forward way as is the practice for others who have requested services within Elgin's CCN.

[REDACTED] is also indicative of there retaliatory intent; as he says that he was told, thereby indicating potential for legal malevolence.

I regretfully have grown weary of these repeated assaults on our efforts to be productive citizens, and we only ask that you assist in ensuring that if we do owe money; that we at least be given due process in determining the amount to be paid based upon local precedent etc, and the 90 day period indicated in the Settlement Agreement.

In addition; we ask that if these people continue to be unreasonable in resolving this matter, (we are capable of paying any fees that are reasonably due) that you assist in enforcing all legal action at our disposal (settlement breach, harassment, mental anguish etc) in order to address the pervasive malevolence, retaliation, racism, harassment, and mental anguish that we are experiencing at the hands of these horrible people. We believe compensations for damages may now be appropriate.

At the time as I write you this letter, I believe that I may be at risk if I go on to my property @ the J.C. Madison Subdivision; as based upon this newest unreasonable precedent; (& warning phone call) SOME FORM OF PROVOCATION MAY BE CREATED IN AN ATTEMPT TO DESTROY OUR CREDIBILITY so again there exists this additional dilemma.

[REDACTED]

19 Support Docs  
+ 3 PG COVER LETTER

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Kathleen Hartnett White, *Commissioner*  
Margaret Hoffman, *Executive Director*



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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

DEC 15 11 10 55  
CHIEF CLERK'S OFFICE

December 15, 2003

Ms. LaDonna Castanuela  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

*via hand delivery*

Re: **City of Elgin**; Petition to Cancel CCN No. 20120  
SOAH Docket No. 582-03-0674; TCEQ Docket No. 2002-1115-UCR

Ms. Castanuela,

Enclosed please find a copy of the proposed settlement agreement relating to the above-referenced matter. Should you have any questions, please call me at 512/239-0687.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kyle Lucas".

Kyle Lucas, Attorney-Mediator

Texas Commission on Environmental Quality (TCEQ)  
Alternative Dispute Resolution (ADR) Program, Office of General Counsel  
P.O. Box 13087, MC-222  
Austin, Texas 78711-3087  
512/239-0687 FAX: 512/239-4015

512/239-0687 ■ FAX 512/239-4015



**POTTS & REILLY, L.L.P.**

ATTORNEYS AND COUNSELORS

401 WEST 15TH STREET, SUITE 850

AUSTIN, TEXAS 78701-1665

David J. Klein

E-MAIL: dkj@pottsrilly.com

TELEPHONE: (512) 469-7474

FAX: (512) 469-7480

WEB: www.pottsrilly.com

December 8, 2003

Via: Facsimile No. 512/255-8986

[REDACTED]  
c/o Ms. Barbara Boulware-Wells  
Sheets & Crossfield, P.C.  
309 E. Main Street  
Round Rock, TX 78664-5246

Re: [REDACTED]; Application of City of Elgin to Cancel Sewer Certificate of Convenience & Necessity (CCN) No. 20120 in Bastrop County; Application No. 33765-C

Dear Ms. Boulware-Wells and [REDACTED]

For your records, attached please find a copy of the signed settlement agreement. Per our conversation last week after the hearing, I have electronically incorporated the parties' handwritten change in Section 3 of the Agreement. Also attached is an updated paper copy of the Agreement reflecting that change. Ms. Boulware-Wells, I will e-mail you an electronic copy of this updated file as well. If anyone has any questions, please do not hesitate to ask.

Sincerely,



David J. Klein

DJK/mb

cc: [REDACTED]

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## APPLICATION NO. 33765-C

IN RE:

CITY OF ELGIN

CANCELLATION OF CCN NO. 20120

§  
§  
§

SOAH DOCKET NO. # 582-03-0674

TCEQ DOCKET NO. 2002-115-UCR

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the City of Elgin ("City"), [REDACTED] [REDACTED] [REDACTED] are also collectively referred to as the "Protestants" in this Agreement.

WHEREAS, certain owners of property within J. C. Madison ("Madison") subdivision including [REDACTED] [REDACTED] [REDACTED] seek sewer service from the City outside the City's service area;

WHEREAS, the Madison subdivision lies within the City's Certificate of Convenience and Necessity for sewer and water service;

WHEREAS, the City has previously not provided water or sewer service to the Madison subdivision;

WHEREAS, a dispute has arisen between the City and [REDACTED] as to the cost of extending sewer service;

WHEREAS, [REDACTED] [REDACTED] have protested the City's actions in SOAH Docket No. 582-03-0674, TCEQ Docket No. 2002-115-UCR ("Pending Suit").

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SETTLEMENT TERMS

1. **City Approval.** The City will seek approval of this Settlement Agreement at the earliest practicable date. This Agreement shall be properly posted and placed on the agenda of the City Council for consideration at its regularly scheduled meeting following execution of this Agreement by [REDACTED]. Upon final action by the City Council, the City shall cause a letter to be sent to the parties notifying them of the action of the City Council, including a copy of the official minutes of the meeting of the City Council. If approval by the City Council is not obtained within two (2) meetings or thirty (30) days, then the Protestants are not bound to any and all terms or provisions of this Agreement.



2. **Dismissal.** Within ten (10) business days of its receipt of the documentation evidencing the City Council's concurrence, ratification and approval of the Agreement as provided for in the preceding Section 1, counsel for the City shall execute and forward to [REDACTED] and counsel for [REDACTED] the Agreed Motion to Dismiss in the "Pending Suit," which motion is attached hereto as Exhibit A.

DJK  
(3) 3. **Consideration.** The City will pay all costs and install any and all necessary sewer collection lines from its main line to the following blocks of the Madison Subdivision <sup>within eight (8) months</sup> of the execution of this agreement: (1) the blocks of Houston Street extending from the city limits to the end of the paved roadway, which is east of Jefferson Street, ("Houston Blocks") and (2) the blocks of Adams Street extending from Houston Street to Monroe Street ("Adams Blocks"). These new lines will provide service to all lots on these specific blocks within the subdivision. The lines installed into this subdivision not only include the two hundred (200) feet from the main line, but also any and all additional pipe to reach each lot of these aforementioned blocks. Each party to this suit is responsible for their own attorney's fees, where applicable. The total cost for each of the Protestants and other present or future property owners on the Houston Blocks to connect to the City's wastewater service will be one thousand nine hundred dollars (\$1,900.00) per lot, payable upon making an application for service, except that Protestants may make their payments in three (3) equal installments over a ninety (90) day period. The total cost for present and future Madison subdivision landowners on the Adams Blocks are a connection charge not to exceed nine hundred dollars (\$900.00) and an impact fee not to exceed one thousand dollars (\$1,000.00). There shall be no other charges to the Protestants or other property owners on the Houston Blocks or the Adams Blocks other than the standard monthly fee for services. The Protestants agree that if the conditions set forth in this paragraph are met, Protestants shall agree to dismiss the Pending Suit. DJK

4. **Default.** If the City fails to provide the infrastructure described in Section 3, above, or fails to provide service to the Houston Blocks and the Adams Blocks within eight (8) months of execution of this Agreement, then the Protestants:

- a. owe no duties initially agreed to in this Agreement;
- b. are released from their obligation in Section 5, Discharge and Release of Specified Claims, herein;
- c. are each entitled to liquidated damages of five hundred dollars (\$500.00) per month each until the system is installed and the service is provided; and
- d. are each entitled to reasonable attorney's fees and costs.

5. **Discharge and Release of Specified Claims.** Effective upon the completion by the City of the sewer lines and service being provided to Protestants, and in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do release and forever discharge each other, their officers, employees and agents, where applicable, of and from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, costs, claims, and demands whatsoever in law or in equity, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, including, without limitation, claims for attorneys' fees, claims for defense, indemnity, "bad faith," extra-contractual damages, punitive damages, or any other claim whatsoever, whether fixed or contingent, liquidated or unliquidated, direct or indirect, known or



15. **Notices.** All notices, requests and other communications under this Agreement shall be made in writing and shall be deemed to be duly given if delivered by courier, facsimile, or certified or registered mail, postage prepaid, as follows:

If to the City: Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 E. Main Street  
Round Rock, TX 78664-5246  
Facsimile: 255-8986

If to [REDACTED]  
[REDACTED]  
P. O. Box 131  
Manor, Texas 78653  
Facsimile: 281-3421

If to [REDACTED]: Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
Facsimile: 469-7480

If to [REDACTED]: Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
Facsimile: 469-7480

16. **Effective Date.** This Agreement shall be effective as of December 3, 2003.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates shown below.

By: 

CITY MANAGER OF CITY OF ELGIN

Date: 12/3/03

[REDACTED]  
Date: 12/03/03

[REDACTED]  
Date: 12-5-03

Date: 12-03-03

By:

**KYLE LUCAS, MEDIATOR FOR TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY**

Date:

L:\Chen\Williams\7wip\bulletins\one agreement-12-02-05\Real.wpd





May 26, 2005

██████████  
P.O. Box 131  
Manor, Texas 78653

VIA FAX (512) 281-3421

Re: Lot ██████ on Houston Street, Lots ██████ on Monroe Street and ██████

Dear ██████:

Please be advised that the following matters have come to the City's attention:

1. Placement of a mobile home on the back of Lots ██████ that front Monroe Street (giving an address as ██████);
2. Extension of the water line from Lot ██████ on Houston Street to the mobile home on Lots ██████ of Monroe Street (with an address of ██████);
3. Extension of the sewer line from Monroe Street to the mobile home on Lots ██████ of Monroe Street (with address ██████); and
4. Placement of mobile homes on Lots ██████ that front Monroe Street and extension of water and sewer services to each such mobile home.

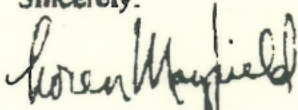
With regard to the above-referenced matters, the following are violations of the City's ordinances:

1. Extension of water line from Lot ██████ on Houston Street to any lot other than Lot ██████ on Houston Street or any structure or building located on any lot other than Lot ██████ on Houston Street;
2. Extension of sewer line from Monroe Street to any lot without the proper payment of tap (\$285.00) and impact fees (\$1,300.00) in addition to any deposit required for proper extension of such service;
3. Extension of water line to any lot previously not serviced by the City of Elgin without the proper payment of tap charges (\$300.00) and impact fees (\$1,900.00) in addition to the \$100.00 deposit per service connection required for proper extension of such service, and
4. Extension of water or sewer lines to more than one dwelling unit on any lot without the proper payment of tap and impact fees in addition to any deposit required for proper extension of such service.

Therefore, please be advised that you have ten (10) days to remedy the above violations. Should you fail to remedy any and all of these violations within such ten (10) day period, the City is prepared to take all actions allowed by law or ordinance, including turning off all water services to such lots and removing any water meters on such lots. Furthermore, before any water can be re-established to the mobile home using the address of [REDACTED], the City will require you submit a survey by a properly licensed Texas land surveyor indicating the exact placement of the mobile home with regard to Lots [REDACTED]. Additionally, the City shall inspect each water and sewer tap to determine whether such tap is installed in accordance with the standards and regulations established for the City. If such connection is not in accordance with such standards or regulations, you will be required to correct such connection prior to the City allowing re-establishment of service to such lot.

Your immediate attention to this matter is required. Should you have any questions concerning this matter, please feel free to contact me at (512) 285-5721.

Sincerely,



Loren Mayfield  
Finance Director

cc: Jim Dunaway, City Manager  
Charlie Crossfield, City Attorney  
Each resident on Lots [REDACTED]



PRESENT OUTSTANDING REQUEST FOR SEWER & WATER

CITY OF ELGIN  
UTILITY APPLICATION

Date of Application: 11-14-2002 Service Connect Date: As Soon As Possible (ASAP)

Name: [REDACTED] Phone# [REDACTED]

Driver: [REDACTED] State TX Date of Birth [REDACTED] Social Security # NA IAW PRIVACY

Service Address: [REDACTED] ACT OF 1974 Sec. 7(a)  
(within elgin's CCN!)

Mailing Address: POST OFFICE BOX 1034 City MANOR State TX

Previous Address: POST OFFICE BOX 131 City MANOR State TX How Long 7 YEARS

Place of Employment: RETIRED Phone # N/A

Address: N/A City N/A State N/A

Name of Spouse or Roommate N/A Phone# N/A

Drivers Lic # N/A State N/A Date of Birth N/A Social Security # N/A

Previous Address: N/A City N/A State N/A How Long: 1 / A

Place of Employment: N/A Phone # N/A

Address: N/A City N/A State N/A

Name of Nearest Relative: [REDACTED] Relation: SISTER

Address: [REDACTED] City [REDACTED] State TX

[HOMEOWNERS MUST REMIT A \$50.00 DEPOSIT WITH THIS APPLICATION]

[ALL OTHERS MUST REMIT A \$100.00 DEPOSIT WITH THIS APPLICATION]

I CERTIFY THAT ALL THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

OFFICE USE ONLY

Date of Connection: \_\_\_\_\_ Account # \_\_\_\_\_

Date of Disconnect: \_\_\_\_\_ Final Bill \_\_\_\_\_

Amount Owed: \_\_\_\_\_ Amount Refunded: \_\_\_\_\_

SIGNATURE

19  
72

KEEP THIS RECEIPT - IT IS IMPORTANT

**ELGIN WATER WORKS**  
City of Elgin, Texas

13

120 Elgin, Texas 20 8 2

Received

Binding at

Street

the sum of

(Dollar)

As deposit given to guarantee the payment of water service and merchandise as long as such service is furnished the above named party by the City.

Upon the discontinuance of such water service, and upon presentation of this receipt, the City of Elgin agrees to refund to the above named party, his heirs and legal representatives only, the above sum of money after deducting therefrom all unpaid bills for such service or merchandise that may then be owing the City of Elgin.

It is further agreed that the above named party may discontinue such service on the 1st day of any month thereafter, and that the City of Elgin may discontinue service at any time and apply said deposit to account of said party after same becomes delinquent, in which case, supplemental deposits will be required before service is resumed. All accounts for water service and merchandise must be paid before any part of this deposit is refunded even though service is discontinued.

**SERVICE TURN ON**

8896

ACCOUNT NO. COMPUTER

DATE TURNED ON

NAME

PREVIOUS METER READING

STREET ADDRESS

PRESNT METER READING

METER ID NO.

MAILING ADDRESS

CITY OF ELGIN  
UTILITY DEPARTMENT  
300 N. Main  
Elgin, Texas 78621  
(817) 286-5721

By

DEPOSIT NO.

DATE

AMT



51207-87

## SERVICE TURN ON

9897

ACCT NO. [REDACTED] COMPUTER [REDACTED]

NAME [REDACTED]

STREET ADDRESS [REDACTED]

METER LID NO. \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

DATE TURNED ON \_\_\_\_\_

PREVIOUS METER READING \_\_\_\_\_

PRESENT METER READING \_\_\_\_\_

CITY OF ELGIN  
UTILITY DEPARTMENT  
310 N. Main  
Elgin, Texas 78621  
(512) 295-5721

By TH

DEPOSIT NO. 14470

DATE 9/23/04

AMT. 100.00



CITY OF ELGIN  
UTILITY ADMINISTRATION

Date of Application: 10-4-2004 Service Start Date: ASAP OR IAW TCEQ GUIDELINES

Name: [REDACTED] & TCEQ SETTLEMENT/HEARING  
Phone: [REDACTED]

Drivers Lic: [REDACTED] TX Date of Birth: [REDACTED] Social Security #: N/A IAW PRIVACY ACT OF 1974

Service Address: [REDACTED]

Mailing Address: P.O. Box 131 City: Manor State: TX

Previous Address: N/A City: N/A State: N/A Phone: N/A YRS: 14

Place of Employment: Retired Previous: N/A

Home: N/A City: N/A State: N/A

Name of Spouse or Partner: N/A Phone: N/A

Current Address: N/A City: N/A State: N/A Phone: N/A

Previous Address: N/A City: N/A State: N/A Phone: N/A

Place of Employment: N/A Phone: N/A

Address: N/A City: N/A State: N/A

Name of Nearest Relative: [REDACTED] Relation: Aunt

Address: [REDACTED] City: [REDACTED] State: MS

[HOMEOWNERS MUST REMIT A \$50.00 DEPOSIT WITH THIS APPLICATION]  
[ALL OTHERS MUST REMIT A \$100.00 DEPOSIT WITH THIS APPLICATION]

I CERTIFY THAT ALL THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

[REDACTED]

10-4-20

OFFICE USE ONLY

Date of Connection: \_\_\_\_\_ Account # \_\_\_\_\_

Date of Disconnect: \_\_\_\_\_ Final Bill: \_\_\_\_\_

Amount Owed: \_\_\_\_\_ Amount Refunded: \_\_\_\_\_

SIGNATURE

KEEP THIS RECEIPT -- IT IS IMPORTANT

**ELGIN WATER WORKS**  
City of Elgin, Texas

\$ 100.00 Elgin, Texas 10/4 20 04  
 Received of [REDACTED]  
 Residing at [REDACTED] Street,  
 the sum of One hundred & no/100 Dollars.

As deposit given to guarantee the payment of water service and merchandise as long as such service is furnished the above named party by the City.

Upon the discontinuance of such water service, and upon presentation of this receipt, the City of Elgin agrees to refund to the above named party, his heirs, and legal representatives only, the above sum of money after deducting therefrom all unpaid bills for such service or merchandise that may then be owing the City of Elgin.

It is further agreed that the above named party may discontinue such service on the 1st day of any month thereafter, and that the City of Elgin may discontinue service at any time and apply said deposit to account of said party after same becomes delinquent, in which case, supplemental deposits will be required before service is resumed. All accounts for water service and merchandise must be paid before any part of this deposit is refunded even though service is discontinued.

[Signature]



CITY OF EEOIN  
UTILITY APPLICATION

Date of Application: 10-4-2004 Date of Connection: ASAP OR IAW TCEO GUIDELINE  
 & TCEO SETTLEMENT/HEARING  
 Name: [REDACTED] Phone: [REDACTED]  
 Drivers License: [REDACTED] State: TX Date of Birth: [REDACTED] Social Security: N/A IAW PRIVACY  
 ACT OF 1974  
 Service Address: [REDACTED]  
 Mailing Address: P.O. Box 131 City: Manor State: TX  
 Present Address: N/A City: N/A State: N/A Years: 14 YRS.  
 Place of Employment: Retired Phone: N/A  
 Address: N/A City: N/A State: N/A  
 Date of Birth: N/A Social Security: N/A  
 Present Address: N/A City: N/A State: N/A  
 Place of Employment: N/A Phone: N/A  
 Address: N/A City: N/A State: N/A  
 Name of Nearest Relative: [REDACTED] Relation: Aunt  
 Address: [REDACTED] City: [REDACTED] State: MS

[HOMEOWNERS MUST REMIT A \$50.00 DEPOSIT WITH THIS APPLICATION]  
 [ALL OTHERS MUST REMIT A \$100.00 DEPOSIT WITH THIS APPLICATION]

I CERTIFY THAT ALL THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

[REDACTED]

## OFFICE USE ONLY

Date of Connection: \_\_\_\_\_ Account # \_\_\_\_\_  
 Date of Disconnect: \_\_\_\_\_ Final Bill: \_\_\_\_\_  
 Amount Owed: \_\_\_\_\_ Amount Refunded: \_\_\_\_\_

SIGNATURE \_\_\_\_\_

KEEP THIS RECEIPT - IT IS IMPORTANT

**ELGIN WATER WORKS**

City of Elgin, Texas

\$ 100.00 Elgin, Texas 10/1 2007

Received

Residing at

Street.

the sum of

Dollars.

As deposit given to guarantee the payment of water service and merchandise as long as such service is furnished the above named party by the City.

Upon the discontinuance of such water service, and upon presentation of this receipt, the City of Elgin agrees to refund to the above named party, his heirs, and legal representatives only, the above sum of money after deducting therefrom all unpaid bills for such service or merchandise that may then be owing the City of Elgin.

It is further agreed that the above named party may discontinue such service on the 1st day of any month thereafter, and that the City of Elgin may discontinue service at any time and apply said deposit to account of said party after same becomes delinquent, in which case, supplemental deposits will be required before service is resumed. All accounts for water service and merchandise must be paid before any part of this deposit is refunded even though service is discontinued.

70



Robert J. Hurton, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**  
*Protecting Texas by Reducing and Preventing Pollution*

August 2, 2001

**FAX TRANSMITTAL #.**  
**512/285-5962**

Mr. Jim Dunaway  
City of Elgin  
Elgin, Texas 78621

RE: [REDACTED]

Dear Mr. Dunaway:

I had to order copies of the CCN maps that we discussed and I didn't receive them until late yesterday so I apologize for the delay.

As you will see, I have faxed you the CCN maps for water and sewer with the "Users Guide to CCN Maps", and the rule from the Chapter 30 Texas Administrative Code, §291.85, identifying the obligation, and the timelines, of the CCN holder to serve anyone within its certificated area.

As you can see your sewer CCN goes well outside the city limits. And although you thought your boundaries were the city limits, that does not negate the fact that the city must serve those people outside the city limits but within the CCN of Elgin.

In our conversation, you also asked who would be responsible for payment of any extensions, etc. Although you indicated the city may charge the persons requesting service outside the city limits the full cost of the extension, the customer sent a newspaper article I am also faxing to you where you state the cost of obtaining sewer service in response to questions from [REDACTED]. [REDACTED] said this was far less than the \$12,810.00 estimate she was given. I believe, from speaking with [REDACTED] that there might be some resistance if they are responsible for more than quoted in your newspaper article. The Texas Natural Resource Conservation Commission (TNRCC) has no jurisdiction in how you will bill for those extensions, but the customers can appeal the cost of obtaining service from a CCN holder with the TNRCC if they feel the quote is too high. An appeal would, of course, begin a hearing process through our agency.

Mr. Jim Dunaway

Page 2

August 2, 2001

The main thing to be understood is that you cannot refuse service to anyone within the CCN area and that the timelines within §291.85 must be met to the best of your ability. If those timelines cannot be met, everything must be in writing to the customer advising of reasons for the delay and expected date of service, not to exceed the 180 day limit.

Mr. Jim Dunaway

Another concern is, you indicated sewer service was transferred from City of Elgin to LCRA in 1997. I did check our records and there is no record of any Sale, Transfer, Merger (STM) for this transaction so TNRCC does not recognize anyone but the City of Elgin as holding the CCN for this area. The newspaper article is quoted as the City will be installing sewer lines and receiving the monthly rates from those customers, which shouldn't be happening if it were transferred. So this might be something else you will need to clarify.

I know this is a lot of information that you probably weren't prepared for, but I want you to be as informed as you can in making the decisions facing you. If you find you need further clarification, or just need to talk about any of this information, please do not hesitate to call me at (512) 239-4767. We will be happy to help you resolve any concerns you might have.

Sincerely,



Debbie Sutton

Lead Investigator, Consumer Assistance Team

Water & Information Assistance Section

Water Permitting & Resource Management Division

DS/rw

Enclosures (CCN Maps, User Guide to CCN Maps, 291.85, Elgin Newspaper Article)

cc:

[Redacted]  
P.O. Box 1034

Manor, TX 78653



RECORD OF PRO SE REPRESENTATION  
BY ME [REDACTED] [REDACTED] [REDACTED]

28

ALL OF MY PLEADINGS ARE CURRENTLY ON FILE WITH SUPPORT DOCS etc  
@ SOAH OFFICE IN AUSTIN, TX  
BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

[REDACTED]  
[REDACTED]  
Claimants (WRITTEN OBJECTIONS TO ORDER #3)  
SOAH DOCKETT NO. 582-03-0674  
TCEQ DOCKETT NO. 2002-1115-UCR

Vs

PETITION OF CITY OF ELGIN TO CANCEL  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY NO. 20120 AND SUBSEQUENT  
WITHDRAWAL

12 OBJECTIONS REGARDING ORDER NO. 3

1. On January 23, 2003, the City of Elgin attempted to file a request to withdraw its petition for cancellation of its Certificate of Convenience and Necessity. In consideration of claimants right to "object in the above captioned matter" the following numerically ordered issues, examples and exhibits of objection are provided for court consideration and presentation in any present and future court proceedings.
2. We object to Elgin's intentions to withdraw, as their attempted withdrawal reflects a regretful ability to informally resolve conflicts with TCEQ Officials without our input, or testimony in this legal forum. For example, if proposal allowed; precedent setting basic sewer and water utility installation fee agreements previously signed and agreed upon would be apparently disregarded if this matter is left unresolved without a hearing. (see attached agreement previously abided by)
3. We object to Elgin's intentions to withdraw, as the attached 12-31-02 letter from City Manager Jim Dunaway says that "the TCEQ has reversed its prior position and now agrees with the City that Texas Administrative Code 291.85 allows the City to charge the customer for extending services pursuant to a service request." This alleged reversal supports our position of not being allowed to provide input while the City of Elgin appears to have had had exclusive access to policy makers.
4. We object to Elgin's intentions to withdraw, as it is our objection that capital impact fees charged for extension of utilities outside of the city limits should only be assessed from a starting point beginning at the edge of the city limits to the eventual point of extension. For example our property is less than 60 (more or less) feet from the city limits, and the property adjacent to our property was provided with city sewer service by extension for approximately \$1,400.00.(name and testimony available)



5. We object, as it is our plea that considering our property is within 60 feet from the edge of Elgin's Eastern City limits; that any capital impact charges (excessive miscellaneous fees past the standard impact fees \$1,285.00 for sewer) occurring as a result of Elgin having to extend within its City boundaries (to reach our property or others) should logically be absorbed by the City.
6. We also object and plead that the extension of Elgin's "sewer and water pipeline infrastructure" within its boundaries should be considered as a distinct and separate jurisdiction that Elgin Officials should be financially responsible for. For example; any proposed fee assessments for "lift station, engineering studies etc related to extension within its boundaries." In order to determine the city's boundaries, a survey may have to be ordered in order to clearly determine such boundaries. Based upon our observation of the city's roadway and utility infrastructure; our property lies within 60 feet of the city's boundaries more or less.
7. We object as the City of Elgin has indicated in prior SOAH Hearing that it had no knowledge of the requirements of 291.85 prior to there previously having to abide by its requirements; yet it chose to arbitrarily deny service (for many years) in the past to many (see attached petition) while allowing service to (our property @ [REDACTED] after much protest) and only one other property within this specific community on the Eastern edge of its city borders. (name and address available)
8. We object as the City of Elgin's past and present conduct indicates that it will not facilitate this particular minority community's sewer and water interest within the boundaries of sincerity and "good faith." My personal experience with the City and the numerous interviews I have conducted with citizens in this community indicate a history of refusal of basic sewer and water services. Several citizens in this predominantly African American community have indicated a "fear of reprisal" if they speak out on this issue. It is our firm belief that there should be some oversight; given Elgin's history of wrongly denying service due to their ignorance. Ignorance should be no excuse for not resolving the harm that Elgin has caused in the form of openly allowing "third world colonia conditions on the eastern edge of its city limits." (see attached exhibits & Film comparing stark contrast West Elgin v East Elgin")
9. We object as the effects of Elgin's past conduct and refusal to provide utility services for property that we own; even within the city limits of Elgin previously cost us Over \$9,000.00 in damages; causing the reversal of an agreed upon sale of a 1/3 acre Lot. The city of Elgin mistakenly told (our) buyers that they (the buyers) would have to pay over \$10,000 to obtain sewer and water services. This statement was inaccurate in accordance with the city's capital impact fee schedule for properties within the city limits, and was also in conflict with 291.85. As a result of the city's inaccuracies, we had to salvage our business reputation by reimbursing the buyers for there deposits, and the sales contract worth \$9,000 plus interest was subsequently canceled following brief litigation. My reputation was adversely affected in this transaction due to Elgin's refusal to reasonably facilitate a basic request for sewer and water services for a customer even within its own city limits. Based upon Elgin's



past and present conduct, we are seeking punitive damages for financial harm inflicted. (see attached copy of sales contract resolution)

10. We object; as the city of Elgin's present annexation (see attached) plan openly indicates that it will resolve or annex areas that are considered as "colonia's" yet "colonia" conditions exist on Elgin's Eastern boundary. The city of Elgin has failed or refused to alleviate "colonia" Conditions as its annexation plan agenda states. It is our position that the city has systematically created economic barriers to obtaining basic sewer and water services by "quoting" prohibitive fees such as \$10,000.00 to as much as \$24,000.00. The motives for such a prohibitive fee structure is irrational; yet the results of such systemic policies are very apparent. (see photos and film)

11. We object in all that we have asked is to be charged the same basic Capital Impact fee that is being charged to inhabitants of the recently annexed Western area of Elgin, TX. We are not asking for a handout; we simply are requesting to be charged no more than the \$3,085.00 total for sewer and water services capital impact fees that the City had promised to charge the inhabitants of Western Elgin during a public Meeting in Feb 2000. The City now promises to charge us more than the Western Elgin inhabitants; yet there is no reasonable motive or justification for charging us different or exclusively higher rates.

12. In closing "I clearly want it to be made a part of this court record" that as a result of I [REDACTED] and my Wife [REDACTED] bringing forth adverse grievances against the city of Elgin, that based upon the history and present state of our relations with the city of Elgin; that the possibility of retaliation exists. In the event that such retaliation occurs; we want to make such occurrence a further point of defense, and cause of legal action in the event of any possible retaliation.

In closing, please accept this "objection format" as official notice of our position in this legal matter.

Best Regards

[REDACTED] Sets of Enclosures:

1. Copy of Previous Sewer Delivery Agreement
2. Copy of 12-31-02 ltr Indicating Change 291.85
3. Copy of 1-9-03 Letter to ALJ
4. Copy of Signed Petition
5. 2 Charts Comparative Exhibit Colonia Conditions
6. City of Elgin Annexation Plan
7. Comparative Film of East & West Elgin
8. Sales Contract Resolution

9. Copy of News Article Indicating Capital Impact  
Fee Schedule

CC:

Eric Cardinell

Susan Potts

John Deering

Laura Zaboroski

Docket Clerk MC105

Executive Director TCEQ



Galveston, Texas, part of ...  
 Madison Addition  
 Birdie Madison  
 the said Addition is within the  
 D. H. J. H. Mayor  
 City Secretary

# J.C. MADISON ADDN

CARRA REFERRED TO  
 BY ELGIN AS WIGGER TOWN

The State of Texas :  
 County of Bastrop. :  
 That we, J. C. Madison and wife Birdie Madison of the County of Grimes and State of Texas, late of Bastrop County, Texas, are the owners of a certain tract of land on the T. Harrison Survey in Bastrop County Texas, conveyed to us by W. L. Wilson, by deed of date Feb. 2nd, 1927, recorded in Book 82, page 167, of the Bastrop County Deed Records, and have laid out and do that portion of said land North of Tex Highway Number 20 is the "Madison Addition" to the town of Elgin, Bastrop County Texas, as the Survey by John Knox, County Surveyor of Lee County, Texas, at Austin, and made a part thereof.

And we do hereby dedicate, designate and set apart for use of the public as streets and alley ways, such streets and all as are shown on said map.

WITNESS OUR HANDS at Austin, Texas, on or date July 1st, 1944.

J. C. Madison  
 Birdie Madison

The State of Texas, :  
 County of Grimes. :  
 BEFORE ME the undersigned authority a Not Public is and for Grimes County Texas on this day personally appears J. C. Madison and wife Birdie Madison, both known to me to be the persons whose names are subscribed to the foregoing instrument, and I have read to me that they, each, executed the same for the purposes and consideration therein expressed. And the said Birdie Madison wife of J. C. Madison having been examined by me privately and apart from her husband, and having the same fully explained to her, she, the said Birdie Madison acknowledged each instrument to be her act and deed, declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to revoke.

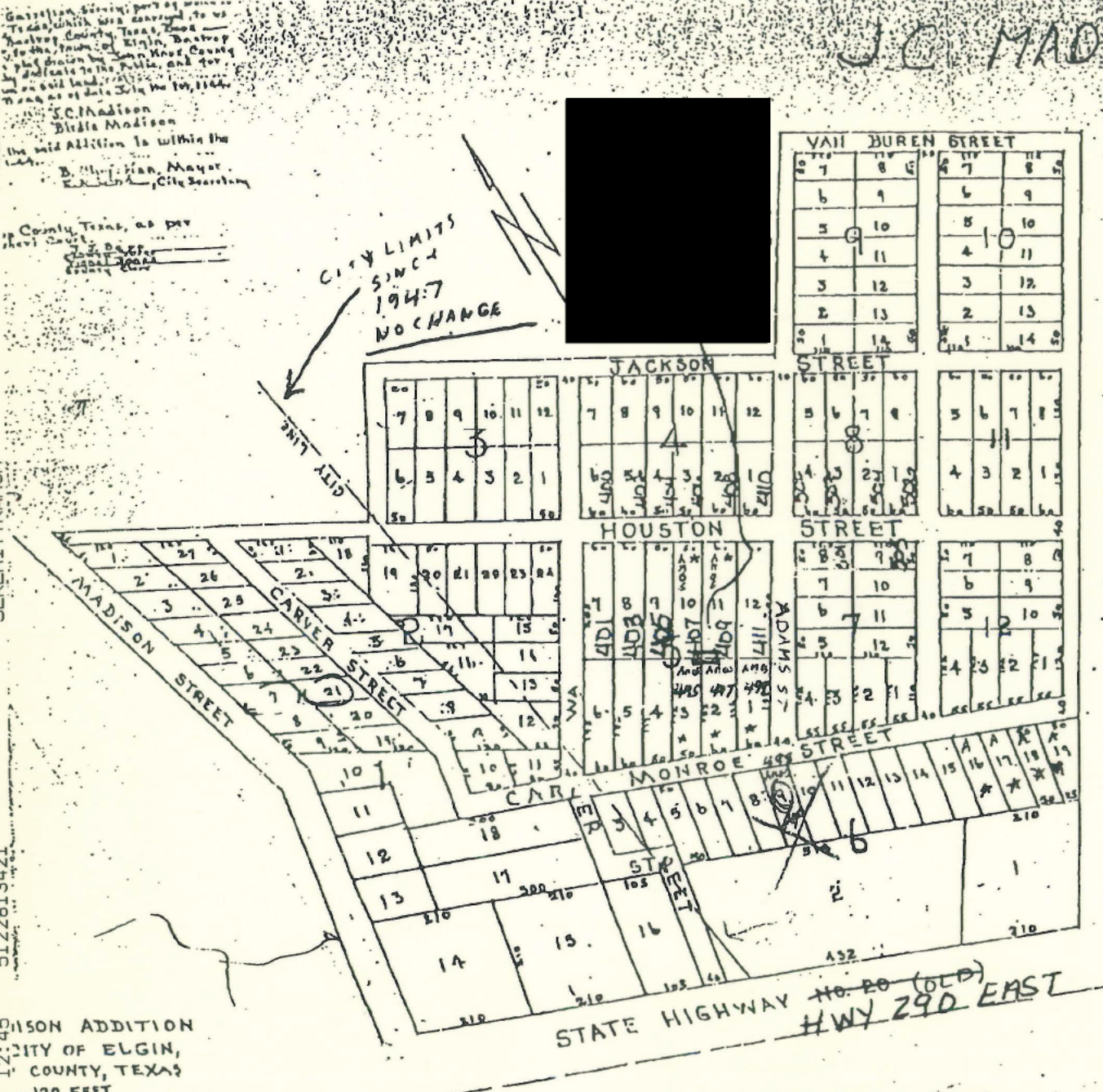
GIVEN under my hand and seal of office at Austin, Texas, this the 27th day of September, 1944.

(Seal) S. W. Synko, Notary Public in Grimes County, Texas.

Filed for record at 10 o'clock P.M. January 20th, 1947 and record 4 o'clock P.M. January 23rd, 1947.

Thelma Jones, C.C.C. & Co.,  
 County Clerk, Bastrop County, Texas

CITY LIMITS SINCE 1947 NO CHANGE



1 BLOCK OFF 290 EAST  
 50 X 100, Outside Elgin  
 CITY LIMITS IAW DUNAWAY, CITY MGR

★ = PROPERTY OWNED BY HANDS

MADISON ADDITION  
 CITY OF ELGIN,  
 COUNTY, TEXAS  
 120 FEET

01222813421

06/02/2005



## TEXAS EI NEWS

### Elgin Settles with Black Neighbors?

In one of the strangest cases in recent times, the city of Elgin, represented at agenda by attorney **Barbara Boulware-Wells**, announced it had reached a settlement with all parties protesting the city's motion to dismiss without prejudice its prior application to cancel certificate of convenience and necessity No. 20120, which in 1975 the city had obtained in order to extend water and wastewater service outside the city's corporate boundaries. However, because the city council has yet to ratify the settlement agreement, and will not meet again until December 16, the Commission, at the request of protestant attorney **David Klein**, continued the matter until the December 17 agenda.

Klein, whose firm has been representing [REDACTED], noted that the agreement includes a covenant not to sue by the protestants and an agreement by the city to provide sewer service to all residents of the J. C. Madison Subdivision, part of which already lies within the city limits and all of which has been within the CCN boundaries for decades. Protestants [REDACTED] also said they would accept the settlement provided their own sewer service application, filed in November 2002, would be treated if though it were filed on the effective date of the settlement. For more on this story, see the October 28 EICR and various issues of *EI NEWS*.]

### New Technology R&D Budget Okayed

At the December 5 work session, the Commission approved a fiscal 2004 operating budget for the New Technology Research and Development Program, which was transferred via House Bill 37 [78<sup>th</sup> Legislature, third called session] from the Texas Council on Environmental Technology. The budget specifies that \$500,000 of the total allocation of \$11,314,310 is to go to air quality support and another \$250,000 to administrative costs. Another \$2,262,862 is targeted for research by the Houston Advanced Research Center that will focus on improving air quality in the Houston-Galveston-Brazoria and Dallas-Fort Worth ozone nonattainment areas.

This leaves the bulk of the money, \$8,301,448, for the grants program that could not be funded after the court struck down the major funding mechanism for the grants program in 2001. During the previous biennium,

only \$2,409,748 was allocated to 15 grantees, and those projects are in various stages of completion. Two have been completed, while seven were only announced in August 2003, after it was clear that the program would have money in the future.

TCEQ anticipates hiring up to six new full-time employees to oversee the TCET programs, though one will not come on board for another year. Staff plans to have a funding plan in place by January 15, 2004, that will define program goals and outline procedures for meeting those goals. Projects with the greatest impact on State Implementation Plans will receive priority, and Commissioner **Ralph Marquez** insisted that air quality projects get priority in the short run. Marquez seemed thrilled to be working with the TCET board - "the brains of Texas" - in choosing and overseeing new technology projects that will improve the state's environment and grow its economy at the same time.

### Use Determinations: Sabine Mining Co.

The Sabine Mining Company on May 23, 2002, filed an appeal of a use determination issued by the Executive Director pursuant to Proposition 2 and House Bill 3121 [77<sup>th</sup> Legislature, 2001]. Sabine had submitted a Tier I application on February 4, 2002, for various partial use determinations on pollution control property located at its lignite mine in Hallsville. At agenda on December 3, the Commission upheld the Executive Director's use determination by a 2-1 vote.

At first, the Executive Director issued a Notice of Deficiency to Sabine, noting that there was no predetermined equipment list (PEL) number corresponding to the one that had been submitted. Moreover, because the equipment at issue was stated by Sabine to serve a production function in addition to pollution control, the more appropriate filing would be a Tier III application. Sabine responded with a Tier III application, but the ED issued a negative determination for all of the property on grounds that the partial percentage figures arrived at by Sabine were not calculated according to TCEQ rules.

Sabine's new application requested various partial exemptions for earth-moving and other equipment it uses for both mining and subsequent reclamation activities that are required by environmental regulations. The only bases cited by Sabine for the appeal were that the application conformed with requirements for a Tier



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(512) 380-0621 (voice)

(512) 554-4374 (cell)

elnews@elnews.com (e-mail)

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*Environmental Insider's*

# EI NEWS

*Covering the Texas environmental landscape with news, commentary, argument, and controversy*

December 14, 2003

## Elgin Watch: Clock Ticking Till December 16!

The city council chambers in Elgin may be crowded on December 16, when council members are scheduled to ratify an agreement to provide water and sewer service at reasonable prices to residents of the predominantly African-American J. C. Madison Subdivision, who live within the city's certificated area but had long been denied service by the city. Failure to approve the agreement could subject the city to civil rights lawsuits and considerable public scrutiny.

Elgin in the 1970's had obtained water and wastewater certificates of convenience and necessity (CCN's) that covered the city's corporate limits and extraterritorial jurisdiction (ETJ), thanks in part to a decision by a Texas Water Quality Board hearings examiner. Apparently, for decades, no one residing in the city's ETJ had applied for sewer service, because city officials claim they were unaware of the CCN boundaries.

So, when former federal corrections officer [REDACTED] and his investor wife [REDACTED] who own two lots in the subdivision, applied for sewer service for a lot they had been unable to sell because of a lack of such service, Elgin city manager Jim Dunaway informed him the cost to extend the city's sewer lines 50 feet to his property would be about \$13,000. After appealing to the Texas Commission on Environmental Quality, [REDACTED] was able to obtain service to that lot for just \$1,000 for an impact fee and \$285 for a sewer tap fee - the same rates the city was charging for service to a mostly white area west of town that was being annexed.

Rather than offer service to all Madison property owners, Elgin took steps toward cancellation of its sewer CCN altogether. While this application was pending, Dunaway announced to [REDACTED] that, "It was never the city's intention to provide wastewater service on demand to individuals outside of our city limits." This was surprising to the [REDACTED] who had learned that Elgin had indeed extended sewer service into Travis County to serve Elgin's public schools as well as numerous residential customers.

An angry Amos then obtained over a hundred signatures from African-Americans living in the Elgin area that the city had refused to provide them with sewer service. That led Dunaway to assert that the city lacked financial resources to honor its CCN commitment to provide sewer service unless the residents paid the full cost of service up front. [REDACTED] was quoted a price of \$23,220, an amount that would cover ten 4-inch service connections and 650 feet of gravity sewer line. Elgin made no attempt to sign up other Madison property owners for service, so that these costs could be borne equally by a number of homeowners, and later accused [REDACTED] of attempting to coerce the city into absorbing his costs for obtaining service.

Moreover, when the [REDACTED] challenged the city's effort to decertify their properties through CCN cancellation, TCEQ referred the matter to the State Office of Administrative Hearings. Proceedings had hardly begun when the city moved to withdraw its petition without prejudice (meaning it could re-file at any time). The protestants demanded that the application be withdrawn "with prejudice," so that they could continue to put pressure on the city to honor its CCN obligations.

The oft-continued proceedings were to have concluded on December 3, but when attorney Barbara Boulware-Wells brought in the signed settlement agreement (which specifies that Elgin will provide sewer service to the entire subdivision), protestant attorney David Klein noticed that the agreement had not been ratified by the city council and was thus not enforceable. That led the Commission to continue the case to its December 17 agenda and the expectation that the city council will ratify the agreement on December 16.



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*Environmental Insider's*

## EI Compliance Report

is published twice monthly by Environmental Insider. *EICR* provides updates on Texas regulatory, permitting, enforcement, and related actions.

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**Duggan Flanakin**

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For orders and inquiries:

**Environmental Insider**  
P. O. Box 81762  
Austin, Texas 78708-1762

For editorial or billing questions, contact:

(512) 380-0621 (voice)  
(512) 554-4374 (cell)  
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## TEXAS EI NEWS

### Elgin Settles with Black Neighbors?

In one of the strangest cases in recent times, the city of Elgin, represented at agenda by attorney **Barbara Boulware-Wells**, announced it had reached a settlement with all parties protesting the city's motion to dismiss without prejudice its prior application to cancel certificate of convenience and necessity No. 20120, which in 1975 the city had obtained in order to extend water and wastewater service outside the city's corporate boundaries. However, because the city council has yet to ratify the settlement agreement, and will not meet again until December 16, the Commission, at the request of protestant attorney **David Klein**, continued the matter until the December 17 agenda.

**Klein**, whose firm has been representing [REDACTED], noted that the agreement includes a covenant not to sue by the protestants and an agreement by the city to provide sewer service to all residents of the J. C. Madison Subdivision, part of which already lies within the city limits and all of which has been within the CCN boundaries for decades. Protestants [REDACTED] also said they would accept the settlement provided their own sewer service application, filed in November 2002, would be treated if though it were filed on the effective date of the settlement. For more on this story, see the October 28 EICR and various issues of *EI NEWS*.]

### New Technology R&D Budget Okayed

At the December 5 work session, the Commission approved a fiscal 2004 operating budget for the New Technology Research and Development Program, which was transferred via **House Bill 37** [78<sup>th</sup> Legislature, third called session] from the Texas Council on Environmental Technology. The budget specifies that \$500,000 of the total allocation of \$11,314,310 is to go to air quality support and another \$250,000 to administrative costs. Another \$2,262,862 is targeted for research by the Houston Advanced Research Center that will focus on improving air quality in the Houston-Galveston-Brazoria and Dallas-Fort Worth ozone nonattainment areas.

This leaves the bulk of the money, \$8,301,448, for the grants program that could not be funded after the court struck down the major funding mechanism for the grants program in 2001. During the previous biennium,

only \$2,409,748 was allocated to 15 grantees, and those projects are in various stages of completion. Two have been completed, while seven were only announced in August 2003, after it was clear that the program would have money in the future.

TCEQ anticipates hiring up to six new full-time employees to oversee the TCET programs, though one will not come on board for another year. Staff plans to have a funding plan in place by January 15, 2004, that will define program goals and outline procedures for meeting those goals. Projects with the greatest impact on State Implementation Plans will receive priority, and Commissioner **Ralph Marquez** insisted that air quality projects get priority in the short run. Marquez seemed thrilled to be working with the TCET board - "the brains of Texas" - in choosing and overseeing new technology projects that will improve the state's environment and grow its economy at the same time.

### Use Determinations: Sabine Mining Co.

The Sabine Mining Company on May 23, 2002, filed an appeal of a use determination issued by the Executive Director pursuant to Proposition 2 and **House Bill 3121** [77<sup>th</sup> Legislature, 2001]. Sabine had submitted a Tier I application on February 4, 2002, for various partial use determinations on pollution control property located at its lignite mine in Hallsville. At agenda on December 3, the Commission upheld the Executive Director's use determination by a 2-1 vote.

At first, the Executive Director issued a Notice of Deficiency to Sabine, noting that there was no predetermined equipment list (PEL) number corresponding to the one that had been submitted. Moreover, because the equipment at issue was stated by Sabine to serve a production function in addition to pollution control, the more appropriate filing would be a Tier III application. Sabine responded with a Tier III application, but the ED issued a negative determination for all of the property on grounds that the partial percentage figures arrived at by Sabine were not calculated according to TCEQ rules.

Sabine's new application requested various partial exemptions for earth-moving and other equipment it uses for both mining and subsequent reclamation activities that are required by environmental regulations. The only bases cited by Sabine for the appeal were that the application conformed with requirements for a Tier



The protestants are not so sure as to let their guard down. After all, Elgin has had the capability for decades to extend sewer service to this community of elderly African-Americans who had grown up knowing better than to ask, much less demand, basic human conveniences like running water and working toilets. Not only did the city fail to offer to provide service, when residents sought service they were stonewalled or offered deals so costly as to be intentionally discouraging. [REDACTED] was even told that he did not need to open up a barber shop on his grandfather's property.

Sadly, the reluctance of the city of Elgin to serve an adjacent subdivision and thus increase property values in an area that it could easily annex raises the specter of "environmental racism" or at the very least, indifference to the plight of certain community members (those living in what used to be called N...town). One thing is certain. Not until a newcomer [REDACTED] put up a fight to force the city to honor its legal obligations did longtime residents begin to speak up for their own needs.

Providing sewer service to this community will surely raise property values there, and thus could enhance the county's and school district's coffers. It will also reduce the potential for further pollution of area streams and possible underground sources of drinking water. To be sure, Elgin is hardly the only Texas community that has failed to be proactive in providing basic human services to all of its residents, regardless of color or economic status. Even Travis County has had a hard time securing wastewater service for rural residents in Kennedy Ridge.

Yet, the lingering doubts as to whether Elgin's leadership is glad to be extending its "hospitality" to a long-neglected neighborhood make this December 16 city council vote extremely important. The Civil War, which took my great-grandfather's life, ended 138 years ago, and President Johnson, a Texan, signed the Civil Rights Act in 1964. It is time that all of Texas, from Elgin to El Paso, moves proactively to eliminate inequities of service based on race, or even tradition - especially when the affected parties can pay for the services.

### **Small Business Compliance Advisory Panel**

Small business representatives came to the Commissioner's work session on December 5 to express their concerns over agency practices. First off was a report from Executive Director Margaret Hoffman, who announced a major new project for the Office of Compliance and Enforcement that will - she promised - include a review of how enforcement activities are affecting small businesses and small local governments in the Lone Star State. That was followed by a report on fiscal 2003 impacts on small business and local governments provided by Tamra-Shae Oatman, manager of TCEQ's Small Business and Local Government Assistance Section. Finally, Ken Legler, who chairs the state's Compliance Advisory Panel, addressed the Commission regarding key policy changes the panel has recommended in the areas of compliance history and the dry cleaner fund program.

Hoffman's report was a stunner, as she noted that in the decade since the consolidation of Texas' environmental regulatory authority into the Texas Natural Resource Conservation Commission (now known as TCEQ), there has been some fine tuning of the agency's penalty policy but never a thorough review of the compliance and enforcement program. One aim of the coming review is to refocus the OCE staff toward ensuring that the top priority is human health and the environment - not just writing and enforcing rules. Hoffman promised to take into consideration various negative (and positive) comments on various aspects of the penalty policy and on the newly installed compliance history rating system.

Commissioner Larry Soward, a former Executive Director at the old Water Commission, applauded Hoffman for her leadership and called the planned review very timely. He encouraged her to involve all stakeholders and to proactively address all compliance and enforcement issues via an extensive and intensive review process. The result, he said, should be a higher degree of confidence by all parties in the TCEQ program. Presiding Officer Kathleen White agreed that a broad, deep review is much needed, and said she had some specific policy questions to pose to OCE staff. She added that there is some new technology and



Notes

Attended the City Council Meeting last night @ 7:00PM  
pertaining this matter, and was not impressed.

I want to specifically say that I was satisfied that the Elgin  
City Council concurred with the December 3, 03 agreement;  
yet I am aware that the Mayor can Subsequently object to this  
agreement.

In addition; Even though the City Council has voted to  
approve the agreement; I do not think it is fair that the City  
SHOULD BE REWARDED for openly violating state guidelines  
which required prompt and reasonable delivery of services  
within 180 days; by allowing the City to have this matter  
dismissed "without prejudice" so as to allow the City to  
(Bring this action again to this Court) and to predictably  
repeat the same pattern of conduct and refusal that I believe  
has been evident to this court.

I ask the court to consider the city's history and pattern of  
refusal to obey state guidelines (and its violation of Federal  
Civil Rights guidelines) as a rational basis to dismiss this  
matter "with prejudice" so that the majority minority  
(Hispanic and African American Citizens) can be able to  
receive the same level of quality sewer and water service as  
the inhabitants of the newly annexed areas of Western Elgin  
without further administrative and legal hassles.

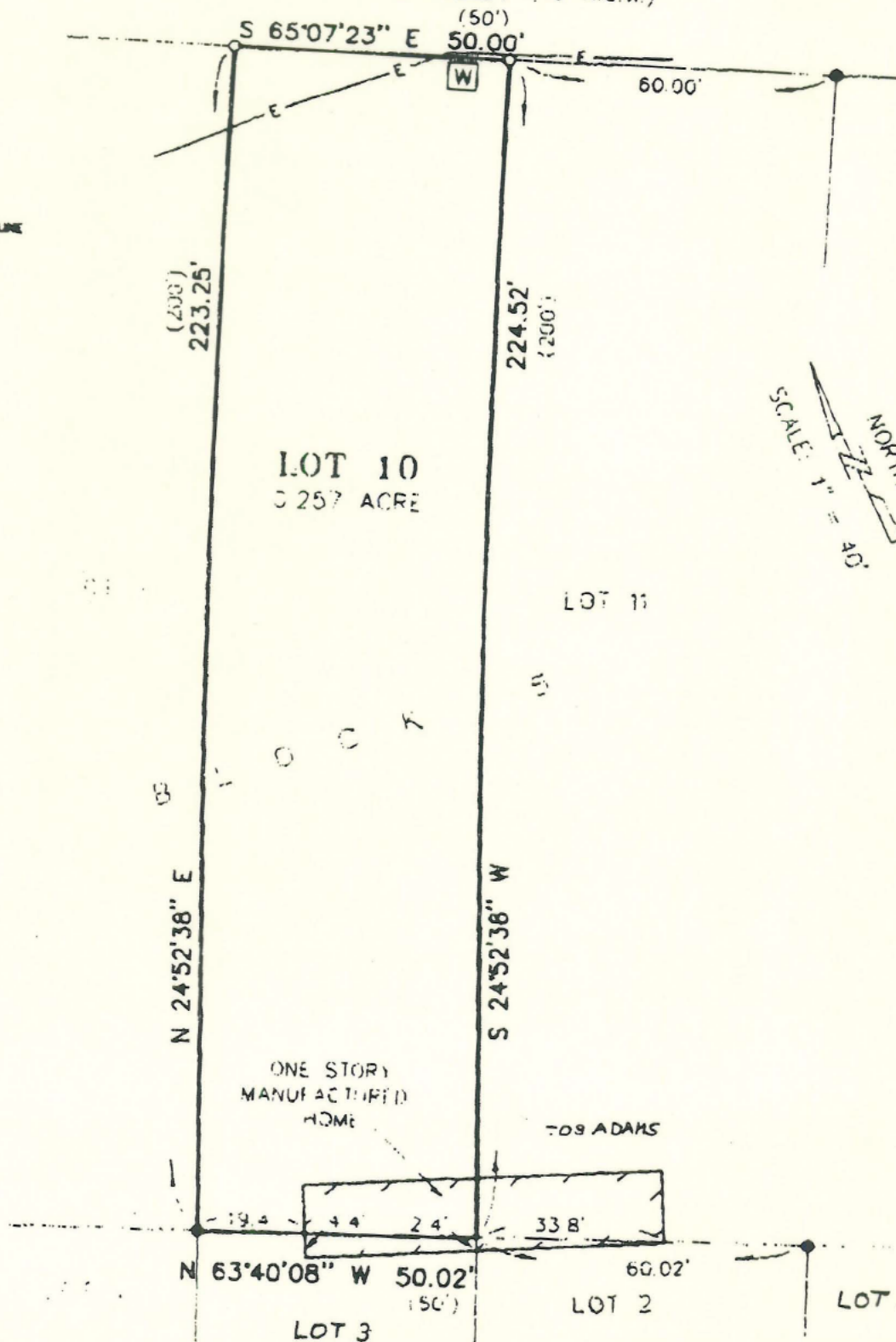
In closing; all we have asked for is that which is required of  
the City "THE PROMPT DELIVERY OF A BASIC  
HUMAN NECESSITY; THE ABILITY TO TAKE A BATH,  
FLUSH A TOILET, AND DRINK CLEAN WATER  
NOTHING MORE. A JUST DECISION THAT  
WOULD PREVENT THE CITY FROM BRINGING THE  
SAME FRIVOLOUS ACTION TO THIS COURT WOULD  
BE RESPECTFULLY APPRECIATED.

Thank You.

# HOUSTON STREET (40' R.O.W.)

## LEGEND

- IRON ROD SET
- IRON ROD FOUND
- IRON PIPE FOUND
- NAIL SET
- NAIL FOUND
- MONUMENT FOUND
- POWER POLE
- WATER METER
- E— OVERHEAD ELECTRICAL LINE
- (XXX) RECORD DATA
- E.O.P. EDGE OF PAVEMENT



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(200')  
223.52

224.52  
(200')

LOT 10  
0.257 ACRES

SCALE  
NORTH

N 24°52'38" E

S 24°52'38" W

ONE STORY  
MANUFACTURED  
HOME

708 ADAMS

N 63°40'08" W 50.02'  
(50')

60.02'

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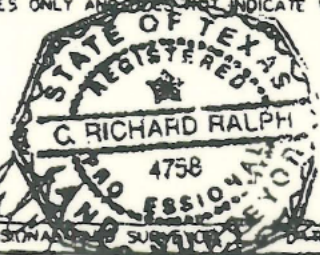
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FAX: (512) 332-0961  
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